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OFFICE OF PETITIONS

In re Application of	:	
Basilicato and Notarianni	:	
Application No.: 10/805,698	:	ON PETITION
Filed: March 22, 2004	:	
Attorney Docket No.: NUMO-0030	:	

This a decision on the petition filed August 6, 2004. The petition will be treated under 37 CFR 1.182.

The petition is **dismissed**.

The application was filed on March 22, 2004. On June 7, 2004, the Initial Patent Examination Division mailed the Notice stating, in pertinent part, that the application had been accorded a filing date of March 22, 2004, but that an executed oath or declaration was missing and Figure 4, as described in the specification, appeared to have been omitted. Relative to the alleged omitted figure, the Notice allowed a non-extendable period for reply of two months from its mailing date.

The present petition was filed on August 6, 2004, responsively. Petitioner therein argued that Figure 4 accompanied the original application papers. In support, a complete copy of the application papers allegedly filed on March 22, 2004, including Figure 4, accompanies the petition. Petitioner also filed a copy of the application transmittal sheet indicating that four sheets of drawings were filed, and a copy of a checklist used by petitioner to ensure that application is complete on filing.

The arguments have been considered, but are not persuasive. The Patent and Trademark Office (the "Office") file is the official record of the papers originally filed in this application. A review of the application file reveals that three sheets of drawings were filed on March 22, 2004. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that counsel asserts that Figure 4 was among the eight sheets of drawings originally filed is not more persuasive than the actual drawings shown to have been received by the official file. Further, petitioner did not provide a copy of an itemized Office date-stamped postcard whereby the Office would have

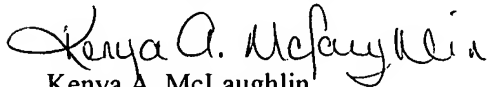
acknowledged receiving four sheets of drawings and that would serve as prima facie evidence that Figure 4 was received on March 22, 2004. Without further corroborating evidence, the documents filed with the instant petition are not sufficient to overcome petitioner's burden of proof.

The petition is dismissed.

Of course, petitioner may submit Figure 4 in the form of an amendment for consideration by the examiner to determine whether Figure 4 contains new matter as compared to the original specification and drawings filed March 22, 2004. See 37 CFR 1.121.

The application is being directed to the Office of Initial Patent Examination for further processing and consideration of the other documents filed in response to the "Notice to File Missing Parts of Nonprovisional Application."

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222.


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Office of Petitions